Document 8 Attachment A

Natural Resources Defense Council

May 27, 2014

Dear Senator Rockefeller and Ranking Member Thune~~,~~:

On behalf of our millions of members and supporters, we are writing to express our strong opposition to the Vessel Incidental Discharge Act of 2014 (S. 2094).

Ballast water discharge from ships is widely recognized as ~~one of~~ the primary sources for the introduction and spread of aquatic invasive species, which cause massive harm to the nation's waters. Invasive species cost the United States billions of dollars annually in damage to public water supply, energy generation systems, and commercial and recreational fisheries. They also disrupt native ecosystems by outcompeting native species, threatening endangered species, damaging habitat, changing food webs, and altering the chemical and physical aquatic environment. For example, the zebra mussel, which was introduced to the United States through ballast water discharges, has significantly altered the Great Lakes ecosystem, causing the extinction of native fish, disrupting natural functions and order, upsetting habitat and food chains, and undermining natural biodiversity.

Yet, instead of taking steps to solve the severe and numerous problems presented by ballast water discharge, S. 2094 ignores the fact that these problems even exist and takes us backward when it comes to responsible management of ballast water discharge. Perhaps most egregious, S. 2094 ~~strips states~~pre-empts states' rights ~~of authority~~ to protect their waters from ship discharges. States have been among the leaders of efforts to control discharges of ballast water infested with invasive species to the nation's waters—efforts that have pushed the shipping industry to develop and install new technologies that prevent such discharges. Despite this fact, S. 2094 prohibits states from adopting or enforcing all new, and most existing, state laws or programs to control ship discharges.

Not only would S. 2094 prevent states from taking or continuing to take proactive measures to limit invasive species in their waters, but it would also largely prevent the federal government from doing so. Indeed, S. 2094 requires existing Coast Guard standards for ballast water to remain in place for at least seven years, instead of being updated regularly to increasingly limit ballast water introductions of invasive species. Especially given the fact that the Coast Guard standards are so weak scientific studies have demonstrated that some ships can meet these standards with no treatment whatsoever, there is a great need to update and revise them on a more regular timeline if we hope to curb the harm invasive species are having on our nation's waters. Further, S. 2094 imposes a number of roadblocks on the revision of new standards that could ensure the Coast Guard's current ones remain in place forever. For example, Section 5 requires that in order to use such revised standards, the Coast Guard must prove they will result in a "scientifically demonstrable and substantial reduction in the risk of introduction or establishment" of invasive species, despite that the National Research Council has concluded it is impossible to meet this level of scientific certainty. To top it all off, Section 6 allows ships to use existing treatment systems for an indefinite period even if the Coast Guard *does* revise treatment standards.

S. 2094 also circumvents one of our country's most important environmental laws – the Clean Water Act (CWA) – by rendering some of its most fundamental provisions irrelevant and transferring decisionmaking from the Environmental Protection Agency (EPA) – an agency with water pollution expertise – to the Coast Guard, which lacks such experience and knowledge. For example, the CWA also requires National Pollutant Discharge Elimination System (NPDES) discharge permits be renewed every five years when states, EPA, and the public re-evaluate treatment levels, monitoring results, and compliance, while S. 2094 excludes States and the public from participating in most regulatory decisions, leaving them instead to the Coast Guard. The CWA requires NPDES permits to meet State water quality standards, forcing the development of technology sufficient to ensure protection of public health and the environment, while S. 2094 relies on the use existing technology, perhaps forever. And the CWA allows states and EPA to issue permits, conduct inspections, obtain discharge records, and bring enforcement actions, while S. 2094 requires the Coast Guard to assume that installed systems are working and being used and requires no permits, inspections, or discharge records.

Finally, Section 7 of S. 2094 eliminates protection altogether for some key waters by exempting vessels that are operating within a "geographically limited area." Under the bill's definition, this provision could exempt ships in some or all of the Great Lakes from any ballast water treatment requirements whatsoever. Section 7 also exempts vessels that operate exclusively within one Captain of the Port (COTP) Zone, which could result in ballast water laden with invasive species to be transferred, without treatment, to pristine areas without invasive species.

For these reasons, we strongly oppose S. 2094.

Sincerely,

Natural Resources Defense Council

Commented [SLS1]: I think the coast guard did control ballast water until they lost a court case saying epa could not rely on coast guard..

Commented [SLS2]: I thought the theory of the exemption is if you are in one water, your ballast water will be the same as the waters who stay in.